

GLADYS M. CRAMER

IBLA 82-852

Decided June 25, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 39540 through I MC 39543.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Gladys M. Cramer, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gladys M. Cramer appeals the Idaho State Office, Bureau of Land Management (BLM), decision of April 15, 1982, which declared the East Haven Group Nos. 1 through 4 placer mining claims, I MC 39540 through I MC 39543, abandoned and void because no affidavit work for 1980 was received prior to December 31, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellant states the 1980 assessment work was performed and duly recorded in the records of Clearwater County, Idaho, August 28, 1980. She asserts a copy of the affidavit was mailed to BLM, but that apparently it was lost in the mail. A copy of the 1980 affidavit accompanied the appeal.

The regulations define "file" to mean "being received and date-stamped by the proper BLM office." 43 CFR 3833.1-2(a). Thus, even though the affidavit allegedly was mailed to BLM and the Postal Service failed to deliver the envelope to BLM, that does not excuse appellant's failure to comply with the cited regulations. Edna L. Patterson, 64 IBLA 316 (1982); Magdalene Pickering Franklin, 57 IBLA 244 (1981); Glenn D. Graham, 55 IBLA 39 (1981). The Board has repeatedly held a mining claimant, having chosen the Postal Service as the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of the filings. Magdalene Pickering Franklin, *supra*; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

This Board has no authority to excuse lack of compliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

